IN THE

Supreme Court of the United States

OCTOBER TERM—1942.

No. 299.

JERSEY CENTRAL POWER & LIGHT COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 329.

NEW JERSEY POWER & LIGHT COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

APPENDIX A TO BRIEF FOR PETITIONERS.

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In accordance with Rule 27 of the Rules of Practice of this Court, petitioners have reprinted separately herein, as Appendix "A" to petitioners' brief, quotations from the relevant parts of the statutes of New Jersey deemed to have an important bearing on this case.

EXCERPT FROM REVISED STATUTES OF NEW JERSEY 1937.

TITLE 48. PUBLIC UTILITIES.

CHAPTER 1. ADDITIONAL POWERS OF CORPORATIONS.

48:1-1. *Application of provisions of general corporation law.* Every corporation organized under any of the provisions of this title, in addition to the powers conferred upon it by the provisions of this title, shall have the general powers and privileges conferred by Title 14, Corporations, General, and shall be governed by the provisions and be subject to the restrictions and liabilities in said Title 14 contained, so far as the same are appropriate to and not inconsistent with the provisions of the act under which any such corporation is organized or created and are convenient or necessary to the objects set forth in its certificate of incorporation.

CHAPTER 2. BOARD OF PUBLIC UTILITY COMMISSIONERS.

Article 1. Constitution of Board.

48:2-1. *Appointment; terms; vacancies.* The board of public utility commissioners, hereinafter in this chapter designated as the "board", created and established by the act entitled "An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers," approved April twenty-first, one thousand nine hundred and eleven (L. 1911, c. 195, p. 374), as amended and supplemented, is continued.

The board shall consist of three citizens of this state not under thirty years of age. At the expiration of the term of a member of the board, the governor shall, by and with the advice and consent of the senate, appoint a successor for a term of six years. The terms of office of the members of the board shall continue until their successors are appointed and qualified. No person shall act as a member of the

board until his appointment has been confirmed by the senate. Not more than two of the members of the board shall be members of the same political party. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

48:2-2. *Organization; seal; employees; compensation.* The board shall organize annually by the election of a president and shall have a common seal. It shall appoint a secretary, counsel and such other employees as it may deem necessary and fix their duties and terms of service. It shall fix the compensation of all officers and employees, subject to the provisions of Title 11, Civil Service, except where otherwise provided by statute.

48:2-3. *Office; meetings.* The board shall have an office in the state house and in such other place or places as it may designate, and shall be provided with all necessary furniture, stationery, maps, supplies and office appliances. It shall meet at such times and places within this state as it may provide.

48:2-4. *Duties of secretary.* The secretary shall keep full and correct minutes of all the transactions and proceedings of the board and perform the other duties required of him. He shall be the official reporter of the proceedings of the board.

48:2-5. *Salary.* The members of the board shall each receive an annual compensation of twelve thousand dollars, to be paid by the treasurer of the state.

48:2-6. *Traveling expenses.* The members and secretary and other employees of the board shall be entitled to receive from the state their necessary traveling expenses while traveling on the business of the board. Such traveling expenses shall be paid on proper voucher therefor approved by the president of the board.

48:2-7. *Purchase of necessary materials.* The board shall purchase such materials, apparatus and measuring instruments as it may deem necessary.

48:2-8. *Connection with public utilities or governmental office, prohibited; exceptions.* No member or employee of the board shall have any official or professional relation or connection with, or hold any stock or securities in, any public utility as herein defined, operating within this state, or hold any other office of profit or trust under the government of this state or of the United States; but the inhibition herein contained shall not apply to anyone holding any municipal office under the government of this state, or the office of commissioner appointed by the chancellor under the provisions of an act entitled "An act to provide for the revision and consolidation of the public statutes of this state," approved March twelfth, one thousand nine hundred and twenty-five (L. 1925, c. 73, p. 244).

48:2-9. *Reports of findings and decisions; publication.* The board shall furnish its secretary such of its findings and decisions as, in its judgment, may be of general public interest. The secretary shall compile the same for the purpose of publication in a series of volumes to be designated "Reports of the board of public utility commissioners of the state of New Jersey", which shall be published in such form and manner as may be best adapted for public information and use. Such publications shall be competent evidence of the reports and decisions of the commission therein contained without any further proof or authentication thereof. The contents of the reports shall not be under the supervision or control of the official state editor.

48:2-10. *Certified copies of records as evidence.* Copies of all official documents and orders filed or deposited in the office of the board, certified by a member thereof or the secretary to be true copies, under the official seal of the board, shall be evidence in like manner as the originals in all courts of this state. The board may charge and collect for such copies ten cents for each folio. The fees so collected shall be paid into the treasury of the state.

48:2-11. *Annual report.* The board shall report annually on or before the first of January, to the governor,

making such recommendations as it may deem proper. The report shall be laid before the next succeeding legislature.

48:2-12. *Rules.* The board may make all needful rules for its government and other proceedings.

Article 2. Jurisdiction, Powers and Duties.

A. Jurisdiction.

48:2-13. *General jurisdiction; "public utility" defined.* The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as hereinafter in this section defined and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this title.

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control within this state any steam railroad, street railway, traction railway, autobus, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this state or by any political subdivision thereof.

Nothing contained in this title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over any taxicab, hotel bus, or bus employed solely for transporting school children and teachers, or any autobus with a carrying capacity of not more than six passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality, which route does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route.

48:2-14. *Approval of grants by municipalities of franchises and privileges to public utilities.* No privilege or

franchise granted after May first, one thousand nine hundred and eleven, to any public utility by a political subdivision of this state shall be valid until approved by the board. Such approval shall be given when, after hearing, the board determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests. In granting its approval the board may impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.

Nothing herein shall require the approval by the board of any consent of a municipality or board of boulevard commissioners for the operation of any autobus in effect March twenty-fourth, one thousand nine hundred and twenty-six, which did not then require such approval to be valid.

48:2-15. *Authority over interstate commerce.* The board or the members thereof, whenever authorized by an act of congress to exercise any power or authority over interstate commerce, shall have full power and authority to administer the provisions of such act within this state, and in cases authorized under such act, in co-operation with boards of other states and the interstate commerce commission.

B. Powers.

48:2-16. *Supervisory and regulatory powers in general.* The board may, after hearing, upon notice, by order in writing, require every public utility:

Compliance with laws and ordinances. a. To comply with the laws of the state and any municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under general or special law of this state.

System of accounts. b. To keep its books, records and accounts so as to afford an intelligent understanding of the conduct of its business and to that end require every public utility of the same class to adopt a uniform system of ac-

counting. Such system shall conform, in so far as in the judgment of the board is practicable, to any system adopted or approved by the interstate commerce commission.

Annual report. c. To furnish annually a detailed report of finances and operations in such form and containing such matters as the board may from time to time by order prescribe.

Notice of accidents. d. To give such notice to the board as the board may by rule require, of any and all accidents which may occur within the state upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, and to investigate any such accident and to make such order or recommendation with respect thereto as in its judgment may be just and reasonable.

48:2-17. *Filing list of officials and their duties with board.* The board may require every public utility to file with the board a statement in writing, verified by the oaths of the president and secretary of the public utility, setting forth the name, title of office or position and post-office address, and the authority, power and duties of every officer, member of the board of directors, trustees, executive committee, superintendent, chief or head of construction and operation, or department, division or line of construction and operation thereof, in such form as to disclose the source and origin of each administrative act, rule, decision, order or other action of the corporation.

Every public utility shall, within ten days after any change is made in the title of, or authority, powers or duties appertaining to any such office or position or the person holding the same, file with the board a like statement, verified in like manner, setting forth such change.

48:2-18. *Depreciation accounts; rates of depreciation; depreciation fund.* The board may, after hearing, upon notice, by order in writing, require every public utility to carry, whenever in the judgment of the board it may reasonably be required for the protection of stockholders,

bondholders or creditors, a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the board may prescribe.

The board shall from time to time ascertain and determine, and by order in writing after hearing fix, proper and adequate rates of depreciation of the property of each public utility in accordance with such regulations or classifications. Such rates shall be sufficient to provide the amounts required, over and above the expense of maintenance, to keep the property in a state of efficiency corresponding to the progress of the industry.

Each public utility shall conform its depreciation accounts to the rate so ascertained, determined and fixed and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund. The income from investments of moneys in the fund shall likewise be carried in such fund. This fund shall not be expended otherwise than for depreciation, improvements, new construction, extensions or additions to the property of the public utility.

48:2-19. *Investigations; valuation of property of public utility.* The board may:

a. Investigate upon its own initiative or upon complaint in writing any matter concerning any public utility;

b. Appraise and value the property of any public utility whenever in the judgment of the board it shall be necessary so to do for the purpose of carrying out any of the provisions of this chapter. In making such valuation the board may have access to and use any books, documents or records in the possession of any department or board of the state or any political subdivision thereof.

48:2-20. *Testing appliances; access to premises; fees.* The board may:

a. Provide for the examination and test of any and all appliances used for the measuring of any product or service of a public utility;

b. By its agents, experts or examiners, enter upon any premises occupied by a public utility for the purpose of

making the examinations and tests provided for in this chapter and to set up and use on such premises any apparatus and appliances necessary therefor;

c. Fix the fees to be paid by any consumer or user of any product or service of a public utility who may apply to the board for such examination or test to be made. Any consumer or user may have any such appliance tested upon the payment of the fees fixed by the board. If the appliance be found defective or incorrect to the disadvantage of the consumer or user such fees shall be repaid to him by the public utility.

48:2-21. *Rates.*

Schedule of rates. a. The board may require every public utility to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare or charge made, charged or exacted by it for any product supplied or service rendered within this state, as specified in the requirement.

Fix rates. b. The board may after hearing, upon notice, by order in writing:

1. Fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility, whenever the board shall determine any existing rate, toll, charge or schedule thereof, commutation, mileage or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential. In every such proceeding the board shall complete and close the hearing and enter its final order within six months afer the filing of the order of the board initiating such proceeding, when such proceeding is on the board's own motion; and within six months after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint.

2. Fix just and reasonable joint rates, which shall be charged, enforced, collected and observed by railroads and

street railroads in the carrying of freight. Whenever the railroads or street railroads involved fail to agree upon the apportionment or division of a joint rate so established, the board may issue a supplemental order declaring the apportionment or division of the joint rate.

Demurrage rates. c. The board may fix the rates or charges to be made by any corporation subject to the provisions of this chapter for the detention of a railroad car containing property transported by railroad to any point in this state or for the use of railroad tracks occupied by such car, commonly called demurrage or car service, or for both such detention and use. Such rates and charges shall conform as nearly as possible to the rates and charges for demurrage or car service prescribed and fixed by the interstate commerce commission for similar service.

Increases in rates; hearings. d. When any public utility shall increase any existing individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates, or change or alter any existing classification, the board, either upon written complaint or upon its own initiative, shall have power after hearing, upon notice, by order in writing to determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change or alteration is just and reasonable shall be upon the public utility making the same. The board, pending such hearing and determination, may order the suspension of the increase, change or alteration until the board shall have approved the same, not exceeding three months. If the hearing shall not have been concluded within such three months the board may during such hearing and determination order a further suspension for an additional period not exceeding three months. The board shall approve the increase, change or alteration upon being satisfied that the same is just and reasonable.

48:2-21.1. *Adjustment of rates during pendency of hearing.* The board may, during the pendency of any hearing

instituted by it, on its own initiative or on complaint, in which the approval or fixing of just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage or other special rates is in issue, or at any other time, negotiate and agree with any public utility for an adjustment of the individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage or other special rates for any product or service supplied or rendered by such public utility. Such adjustment may be for, or without, a specified limit of time. In no event shall any such adjustment be regarded as contractual. Such adjustment shall at all times be subject to change through the proceedings provided for by this chapter, or through negotiation and agreement under this section. The board as a part of any such negotiation and adjustment shall provide for the continuance, suspension or other disposition of any hearing of the character aforesaid then pending.

48:2-22. *Compacts for joint regulation and control of gas and electricity rates.* The board may enter into compacts in the name of the state of New Jersey with the states of New York, Vermont, Massachusetts, Connecticut and Pennsylvania, or any one or more of such states, or any other state, through such body in each such state or states as may be designated by law to act, for the purpose of establishing joint regulation and control of rates for electricity and gas transmitted between such states.

The board shall report for ratification the terms of any such compact to the legislature of this state at a regular session thereof after the compact has been agreed upon, and shall recommend such legislation, both state and federal, as may be necessary to be enacted to render the compact effective.

48:2-23. *Safe and adequate service.* The board may, after hearing, upon notice, by order in writing, require any public utility to furnish safe, adequate and proper service and to maintain its property and equipment in such condition as to enable it to do so.

48:2-24. *Resumption of service.* If any public utility shall discontinue service and the board after hearing upon notice shall find and determine that service should be resumed, the board may order that service be resumed forthwith or on such date as it may fix.

48:2-25. *Standards, classifications and measurements of service.* The board may, after hearing, by order in writing:

a. Fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed, and followed thereafter by any public utility;

b. Fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by a public utility, and prescribe reasonable regulations for examination and test of the product or service and for the measurement thereof;

c. Establish reasonable rules, regulations, specifications and standards, to secure the accuracy of all meters and appliances for measurements.

48:2-26. *Maintenance of junction points and connections.* The board may, after hearing, upon notice, by order in writing:

a. Direct any railroad, street railway or traction company to establish and maintain at any junction or point of connection or intersection with any other line of said road, or with any line of any other railroad, street railway, or traction company, such just and reasonable connections as shall be necessary to promote the convenience of passengers or shippers of property;

b. Direct any railroad, street railway or traction company engaged in carrying merchandise to construct, maintain and operate, upon reasonable terms, a switch connection with any private sidetrack which may be constructed by any shipper to connect with the railroad or street rail-

way where, in the judgment of the board, such connection is reasonable and practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same.

48:2-27. *Extension of facilities.* The board may, after hearing, upon notice, by order in writing, require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same and when the financial condition of the public utility reasonably warrants the original expenditure required in making and operating the extension.

48:2-28. *New grade crossings; approval of board.* No highway shall be constructed across the tracks of any railroad company at grade, nor shall any track over which locomotives, railroad or street railway cars are to pass be laid across any highway, so as to make a new crossing at grade, nor shall the tracks of any railroad, street railway or traction company be laid across the tracks of any other such company without first obtaining permission from the board.

This section shall not apply to the replacement of lawfully existing tracks.

48:2-29. *Protection at grade crossings.* Whenever it shall appear to the board that a public highway and a railroad or a street railway, or that a railroad and a street railway, cross one another at the same level and that conditions at such grade crossing make it necessary that gates be erected or that some other reasonable provision for the protection of the travelling public be adopted, the board may order the railroad or street railway company or both, to install such protective device or adopt such other reasonable provision for the protection of the travelling public at the crossing as in the discretion of the board shall be necessary.

48:2-29.1. *Prohibit payment of dividends except from surplus or net profits.* The board may, after hearing upon notice, by order in writing, prohibit any public utility from paying dividends except from surplus or net profits as permitted by the law of this state and require any public utility to comply with the law of this state with respect to the payments of dividends.

48:2-29.2. *Prohibit or limit payment of dividends by utility failing to comply with board's order.* The board may, after hearing, upon notice, by order in writing, prohibit or limit the payment of dividends by a public utility if the board, after such hearing, finds and determines that such public utility fails to comply with any order of the board ascertaining, determining and fixing reasonably adequate working capital or rates of depreciation or with any order requiring such public utility by adequate maintenance to keep its property and equipment in condition to furnish safe, adequate, and proper service. Every order so made by the board shall continue in effect until the board by its certificate in writing determines that the conditions on the existence of which the making of the order was based have been corrected.

48:2-29.3. *Discontinuance of surcharge.* Whenever any public utility shall heretofore have been or shall hereafter be authorized by the board to collect a surcharge to raise a definite amount of money or for a specified purpose and the board, after hearing upon notice, shall determine that the amount authorized has been collected, or that the specified purpose has been accomplished, the board is hereby empowered to require by an order in writing the immediate discontinuance of such surcharge.

48:2-29.4. *Repayment of excess surcharge:* Whenever after hearing upon notice the board shall determine that any public utility has collected by means of a surcharge an amount of money exceeding the authorized amount or has continued to collect a surcharge after the specified purpose for which it was authorized has been accomplished,

the board may require such public utility by an order in writing to repay the excess so collected to those from whom the same was collected.

48:2-29.5. *Regulating deposits by customers to secure payment for services; interest on deposits.* The board may adopt rules and regulations prescribing the terms and conditions under which public utilities may require the deposit of moneys to secure the payment by customers of such sums as may become due for services to be rendered and the conditions under which repayment of moneys deposited for such purpose shall be made.

The board may adopt rules and regulations prescribing the rate of interest that shall be credited or paid on moneys so deposited.

C. Professional or Expert Service.

48:2-30. *Requisition of sum required for payments for services; reservation.* When any contract is made by the board for professional or expert services for the purposes of carrying out any of the provisions of this chapter, the board shall make requisition on the state comptroller for the reservation of such sum as may be required to make payments for the services and doing the work agreed upon in the contract. The comptroller shall reserve for the purpose of making such payments, from the money appropriated by the legislature for the salaries and expenses of the board, the sum called for in the requisition.

48:2-31. *Balance of reserve; disposition.* If the work called for by the contract mentioned in section 48:2-30 of this title is not completed during the fiscal year in which the contract is made, the balance of the sum reserved by the comptroller on account of the contract shall remain to the credit of the board and shall be used for the purpose of making further payments until the work called for by the contract is completed. No such balance shall be retained nor shall any such contract be extended beyond the close of the fiscal year following the year in which the contract is made.

Article 3. Hearings and Investigations.

48:2-32. *Board rules to govern; single member may sit.* All hearings and investigations before the board or any member thereof shall be governed by rules adopted by the board. Neither the board nor such member shall be bound by the technical rules of evidence. The members of the board may sit singly for the purpose of taking testimony in any proceeding.

48:2-32.1. *Examiners; scope of investigations; powers; compensation.* The board may designate in writing any member of the legal staff of the board or any department head who is an attorney at law of this state to sit as examiner for the purpose of taking testimony in any investigation of any accident which may occur within this state upon the property of any public utility, or directly or indirectly arising from or connected with its maintenance or operation; or in any investigation or hearing upon the application of a railroad company to abandon any railroad station or to stop the sale of passenger tickets, or to cease to maintain an agent to receive and discharge freight at any station now or hereafter established in this state, at which passenger tickets are now or may hereafter be regularly sold, or at which such agent is now or may hereafter be maintained, or at any hearing upon application for the transfer of municipal consents for the operation of autobusses; or upon application by a public utility for approval of a proposed sale of property having a value not exceeding five thousand dollars or of a proposed mortgage or encumbrance of property not exceeding in amount five thousand dollars; or in any investigation or hearing relating to failure to file annual or other reports, or to conform the same to the rules and regulations of the board.

Such officer or employee so designated shall have the same powers as a member of the board sitting singly, including power to report to the board his recommendations as to the order or other disposition to be made.

The board shall adopt rules affording an opportunity to parties affected by any recommendation made by such

examiner to be heard before the board, either in oral argument or on written briefs in the board's discretion, on the question of adopting, rejecting or modifying the recommendations so made.

An officer or employee of the board so designated as examiner shall not be paid or receive, directly or indirectly, any additional compensation for such services.

48:2-33. *Witnesses; production of documents; oaths; subpoenas.* The board may compel the attendance of witnesses and the production of tariffs, contracts, papers, books, accounts and all other documents. Any member of the board may administer oaths to all witnesses who may be called before the board or any member thereof. Subpoenas issued by the board shall be signed by one of the members thereof and by the secretary, and may be served by any person of full age.

48:2-34. *Depositions.* The board may, in any investigation or hearing, by its order in writing, cause the deposition of witnesses residing within or without the state to be taken in such manner as it may by rule prescribe.

48:2-35. *Compelling witness to testify or produce documents; contempt.* If a person subpoenaed to attend before the board or a member thereof fails to obey the command of the subpoena without reasonable cause, or if a person in attendance before the board or a member thereof refuses without lawful cause to be examined or to answer a legal or pertinent question, or to produce a book or paper, when ordered so to do by the board or a member thereof, the board or the member may apply to the supreme court or any justice thereof, upon proof by affidavit of the facts, for an order returnable in not less than two nor more than ten days, directing such person to show cause before the court or justice why he should not comply with the subpoena or order of the board.

Upon the return of the order the court or justice before whom the matter shall come on for hearing shall examine under oath such person whose testimony may be relevant

and such person shall be given an opportunity to be heard, and if the court or justice shall determine that such person refused without legal excuse to comply with the subpoena or the order of the board, the court or justice may order such person to comply forthwith with the subpoena or order. Any failure to obey the order of the court or justice may be punished by the court or justice as a contempt of the supreme court.

48:2-36. *Self-incrimination; immunity from prosecution.* No person shall be excused from testifying or from producing any book, document or paper in any investigation or inquiry by or upon a hearing before the board or any member thereof when ordered so to do by the board or member, upon the ground that the testimony or documentary evidence required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture on account of any matter or thing concerning which he shall, under oath, have testified or produced documentary evidence, except that he shall not be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein shall give to any corporation immunity of any kind.

48:2-36.1. *Requiring utility to submit data relevant to inquiry or investigation by board.* The board may by order in writing require any public utility to compile from its accounts, books, records, documents, and papers and submit to the board any data, material and relevant to any inquiry, investigation or proceeding undertaken by or pending before such board. The data which the board is hereby empowered to require to be compiled may relate and extend to services rendered, business done, transactions had, and property located, within or without this state where such data is material and relevant to the inquiry, investigation or proceeding so undertaken by, or pending before the board.

48:2-37. *Corporations and persons owning or controlling public utility stock; compelling production of records*

and attendance of witnesses. The board, or any member of the board, may compel by service of its subpoena the production of the books, accounts, records, contracts and other documents in writing of (a) any corporation or person owning, holding or controlling, separately or in affiliation with another corporation or person, five per cent or more of the capital stock of any public utility, and of (b) any corporation five per cent of whose capital stock is owned, held, or controlled by any corporation or person so owning, holding or controlling, separately or in affiliation with another corporation, or person, five per cent or more of the capital stock of any public utility, respecting any relation between such public utility and such corporation or person.

The board, or any member of the board, may compel the attendance of witnesses for the purpose of obtaining information as to such books, accounts, records, contracts, and other documents and writings in the same manner that witnesses are now compelled to testify before the board.

Information, books, accounts, records, contracts and other documents in writing obtained by the board through the proceeding hereby authorized shall be used by the board only for the purpose of aiding the board in reaching a determination in a proceeding or on an issue before it, and for no other purpose.

48:2-38. *Testimony of member or employee in civil suits.* No member or employee of the board shall be required to give testimony in a civil suit to which the board is not a party, with regard to information obtained by him in the discharge of his official duty.

48:2-39. *Fees of witnesses.* The fees of witnesses required to attend before the board shall be one dollar for each day's attendance and three cents for every mile of travel, by the nearest generally traveled route, in going to and from the place where the attendance of the witness is required. The fees shall be paid when the witness is excused from further attendance. The disbursements made in payment of such fees shall be audited and paid in the manner provided for the payment of expenses of the board.

No witness subpoenaed at the instance of parties other than the board shall be entitled to compensation from the state for attendance or travel unless the board shall certify that his testimony was material to the matter investigated.

Article 4. Orders of Board.

48:2-40. *Majority vote; service; effective dates; rehearings; revocation or modification.* A majority vote of the board shall be necessary to the making of an order. Every order made by the board shall be served upon the person or public utility affected thereby within ten days from the time the order is filed, by personally delivering or by mailing a certified copy thereof in a sealed package with postage prepaid to the person affected or to an officer or agent of the public utility upon whom a summons may be served. All orders of the board shall become effective upon such dates after the service thereof as may be specified therein. The board at any time may order a rehearing and extend, revoke or modify an order made by it.

48:2-41. *Enforcement.* Observance of the orders of the board may be enforced by mandamus or injunction in appropriate cases, or by suit in equity to compel the specific performance of the order or of the duties imposed by law upon the public utility affected by the order.

48:2-42. *Penalty for noncompliance with orders.* Any person or public utility that shall fail to comply with an order of the board, except an order to resume service which has been discontinued, shall be subject to a penalty of one hundred dollars for every day during which the default continues. Any person or public utility that shall fail to comply with any order of the board directing the public utility to resume service which has been discontinued shall be subject to a penalty of two hundred and fifty dollars for every day during which such default continues. Such penalties shall be recovered in an action at law in the name of the state.

Article 5. Review of Orders of Board.

48:2-43. *Certiorari; application; notice.* Any order made by the board may be reviewed upon certiorari by the supreme court. No certiorari shall be allowed unless application therefor be made within thirty days from the date upon which the order becomes effective, nor unless notice in writing of the application shall have been given to the board with a copy of the affidavits or proofs upon which the application is based. The notice shall be served upon the secretary of the board either personally or by leaving it at the office of the board in Trenton. The evidence presented to the board together with the findings and the order issued thereon, shall be certified by the board to the supreme court as its return.

48:2-44. *Stay of orders in general.* The allowance of a writ of certiorari to review any order of the board shall not supersede or stay the order of the board unless the supreme court or a justice thereof shall so direct. The prosecutor in certiorari may be required by the supreme court or a justice thereof to give bond in such form and amount as the supreme court or the justice thereof allowing the stay shall require.

48:2-45. *Stay of order to resume service.* No stay of any order of the board directing a public utility to resume service which has been discontinued shall be granted unless the public utility shall apply to the supreme court or a justice thereof for a review of the order within ten days from the service thereof.

Written notice of the application for a review and a stay in such case shall be given to the board within five days after the service of the board's order; except, that if the day following service of the order falls on Sunday or a legal holiday the public utility shall have five days following such day to serve the notice. The notice shall be served upon the secretary of the board either personally or by leaving the same at the office of the board in Trenton.

48:2-46. *Setting aside orders.* The supreme court is hereby given jurisdiction to review any order of the board

and to set aside such order in whole or in part when it clearly appears that there was no evidence before the board to support the same reasonably or that the same was without the jurisdiction of the board.

No order shall be set aside in whole or in part for any irregularity or informality in the proceedings of the board unless the irregularity or informality tends to defeat or impair the substantial right or interest of the prosecutor in certiorari.

48:2-47. *Ordering rehearing by board.* If, with respect to any order brought under review by certiorari, it shall appear equitable and just that a rehearing should be had before the board, the supreme court may order that a rehearing be had before the board upon such terms and conditions as are reasonable. The board shall thereupon proceed to a rehearing on the evidence upon which the order under review was based, and upon such additional evidence, if any, as may be produced. As the result of the rehearing the board may readopt the order or alter, amend, modify or extend it.

The court of errors and appeals, on appeal from a judgment of the supreme court upon certiorari to review an order of the board, may, whenever it shall deem it equitable and just that a rehearing should be had before the board, remit the record and proceedings before it to the supreme court to the end that said court may order that such rehearing may be had before the board upon such terms and conditions as are reasonable, as hereinbefore provided.

48:2-48. *Board proceedings to have preference.* Any proceeding in any court of this state directly affecting an order of the board or to which the board is a party shall have preference over all other civil proceedings pending in such court.

Article 6. Penalties.

48:2-49. *Performing, participating in or causing prohibited acts.* Any person who shall knowingly and willfully perform, commit or do, or participate in performing, com-

mitting or doing, or who shall knowingly and willfully cause, participate or join with others in causing any public utility company to do, perform or commit, or who shall advise, solicit or persuade, or knowingly and willfully instruct, direct or order any officer, agent or employee of any public utility company to perform, commit or do any act or thing forbidden or prohibited by this chapter or by sections 48:3-1 to 48:3-7, 48:3-9, 48:3-10 or 48:12-90 of this title, shall be guilty of a misdemeanor.

48:2-50. *Failure to perform required acts.* Any person who shall knowingly and willfully neglect, fail or omit to do or perform, or who shall knowingly and willfully cause or join or participate with others in causing any public utility company to neglect, fail or omit to do or perform, or who shall advise, solicit or persuade or knowingly and willfully instruct, direct or order any officer, agent or employee of any public utility company to neglect, fail or omit to do any act or thing required to be done by this chapter or by sections 48:3-1 to 48:3-7, 48:3-9, 48:3-10 or 48:12-90 of this title, shall be guilty of a misdemeanor.

48:2-51. *Utilities acting unlawfully.* Any public utility company which shall perform, commit or do any act or thing prohibited or forbidden by this chapter or by sections 48:3-1 to 48:3-7, 48:3-9, 48:3-10, or 48:12-90 of this title, or which shall neglect, fail or omit to do or perform any act or thing thereby required to be done by it, shall be guilty of a misdemeanor.

48:2-52. *Rights preserved.* This chapter shall not have the effect to release or waive any right of action by the board or by any person for any right, penalty or forfeiture which may have arisen or which may arise under any of the laws of this state. Any penalty or forfeiture enforceable under this chapter shall not be a bar to or affect a recovery for a right or affect or bar any indictment against any public utility or person operating such public utility, its officers, directors, agents or employees.

CHAPTER 3. PUBLIC UTILITIES IN GENERAL

Article 1. Prohibitions and Restrictions.

48:3-1. *Unjust or unreasonable discriminations or classifications of rates; "board" defined.* No public utility shall:

a. Make, impose or exact any unjust or unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, commutation rate, mileage and other special rate, toll, fare, charge or schedule for any product or service supplied or rendered by it within the state;

b. Adopt or impose any unjust or unreasonable classification in the making or as the basis of any individual or joint rate, toll, fare, charge or schedule for any product or service rendered by it within this state.

The word "board" as used in this chapter shall mean the board of public utility commissioners.

48:3-2. *Unjust or unreasonable regulations.* No public utility shall adopt, maintain or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or otherwise in violation of law.

48:3-3. *Improper service; refusal or withholding of service.* No public utility shall provide or maintain any service that is unsafe, improper or inadequate, or withhold or refuse any service which reasonably can be demanded or furnished when ordered by the board.

48:3-4. *Undue preferences.* No public utility shall make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person, locality or particular description of traffic, or subject any particular person, locality or particular description of traffic to any prejudice or disadvantage.

48:3-5. *Capitalizing franchises or contracts for consolidation.* No public utility shall:

a. Capitalize any franchise to be a corporation;

b. Capitalize any franchise in excess of the amount, exclusive of any tax or annual charge, actually paid to the state or any political subdivision thereof as the consideration of the franchise;

c. Capitalize any contract for consolidation, merger or lease; or

d. Issue any bonds or other evidence of indebtedness against or as a lien upon any contract for consolidation, merger or lease.

Nothing herein shall prevent the issuance of stock, bonds or other evidence of indebtedness, subject to the approval of the board, by any lawfully merged or consolidated public utilities not in contravention of this section.

48:3-6. *Gratuities to public officials.* No public utility shall give, grant or bestow upon any local, municipal or county official any discrimination, gratuity or free service.

Nothing herein shall prevent the entry into any public conveyance or in or upon the property of any public utility of any such official in the pursuit of his public duties in connection with the particular conveyance or property so entered by him, upon exhibiting his authority so to do.

48:3-7. *Sales, leases, mortgages or consolidations; approval of board required; exceptions.* No public utility shall, without the approval of the board, sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility.

Every sale, mortgage, lease, disposition, encumbrance, merger or consolidation made in violation of this section shall be void.

Nothing herein shall prevent the sale, lease or other disposition by any public utility of any of its property in the ordinary course of business, nor require the approval of the board to any grant, conveyance or release of any lands or interest therein heretofore made or hereafter to

be made by any public utility to the state or any county or municipality thereof, for public use.

The approval of the board shall not be required to validate the title of the state or any county or municipality thereof, to any lands or interest therein heretofore condemned or hereafter to be condemned by the state or any agency, county or municipality thereof for public use.

48:3-7.1. *Certain contracts between public utilities and corporations or persons owning or controlling utility stock; approval of board; disapproval.* No management, advisory service, construction or engineering contract that in itself or in connection with another contract relating to the same work, project, transaction or service involves the expenditure of a sum exceeding twenty-five thousand dollars, made by any public utility with any person or corporation owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent or more of the capital stock of such public utility or with any corporation five per cent of the capital stock of which is owned, held or controlled by a person or corporation owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent of the capital stock of such public utility shall be valid or effective until approved in writing by the board.

The board shall disapprove such contract if it determines that such contract violates the laws of this state or of the United States, or that the price or compensation thereby fixed exceeds the fair price or fair compensation for the property to be furnished or the work to be done or the services to be rendered thereunder or is contrary to the public interest; otherwise the board shall approve such contract.

No order shall be made by the board disapproving such a contract except after hearing upon notice.

48:3-7.2. *Loans to corporations or persons owning or controlling public utility stock; approval of board required.* Except with the approval in writing of the board first had and obtained, no public utility shall loan any of its money or property to any other person, firm, group, association,

company, trust or corporation owning, holding or controlling separately or in affiliation with others, five per cent or more of the capital stock of any such public utility or to any corporation five per cent or more of the capital stock of which is owned, held or controlled by any person, firm, group, association, trust, or corporation owning, holding or controlling separately or in affiliation, five per cent or more of the capital stock of such public utility.

48:3-7.3. *Investment of depreciation fund in certain securities; approval of board.* No public utility shall, without the approval in writing of the board first had and obtained, invest any part of its depreciation fund in obligations or securities of any kind, except obligations and securities that are legal investments for savings banks under the laws of this state, and except obligations and securities of the underlying or subsidiary public utility corporations of this state, of such public utility.

48:3-7.4. *Depreciation fund investments kept in state.* Every public utility shall at all times keep within this state all obligations and securities in which its depreciation fund is invested and reinvested.

48:3-7.5. *Disposition of certain depreciation fund investments; board may order.* The board may after hearing upon notice order any public utility to dispose of any obligations or securities in which its depreciation fund is now, or may hereafter be, invested, except obligations and securities that are legal investments for savings banks under the laws of this state, and except obligations and securities of underlying or subsidiary public utility corporations of this state, of such public utility.

48:3-7.6. *Balance of depreciation fund to be deposited within state.* Every public utility shall deposit, and at all times keep deposited in its own name and to its own credit and in a banking or trust company located in this state, the balance of the depreciation fund of such public utility which is not invested in accordance herewith or expended in accordance with section 48:2-18 of this title. This provi-

sion shall apply to every depreciation fund whether accumulated before or after March twelfth, one thousand nine hundred and thirty-five.

48:3-7.7. *Certain railroads exempt.* The provisions of sections 48:3-7.3 to 48:3-7.6 of this title shall not apply to any public utility subject to the jurisdiction of the interstate commerce commission owning, operating, managing or controlling a steam railroad within this state.

48:3-7.8. *Records to be kept within state; keeping outside state; consent of board required; production upon notice.* Every public utility shall at all times keep within this state all records, books, accounts, documents and other writings relating to contracts entered into, transactions had, services rendered, business done and property within this state, and shall at no time remove any of such records, books, accounts, documents or writings from this state without the consent in writing of the board first had and obtained.

The board may by order in writing grant consent and permission under such regulations and conditions as it may see fit to impose for the keeping of any of such records, books, accounts, documents and other writings outside of the state in such cases as the board may determine that such consent or permission may be of financial advantage to the customers of the public utility within this state. Such consent or permission so granted may be revoked by the board at any time without notice. A public utility granted such consent or permission shall on the notice in writing of the board produce such records, books, accounts, documents and other writings at such time and place within this state as the board may designate.

48:3-7.9. *Designation of resident agent having custody of records; revocation.* Every public utility shall within fourteen days after March twelfth, one thousand nine hundred and thirty-five, file with the board a designation in writing of an agent, resident of this state, who shall have the custody of such records, books, accounts, documents and other writings, and upon whom process for the pro-

duction of the same before the board may be served. Such designation shall set out the name of such agent, his place of residence within this state and his place of business. Every public utility filing such designation may at any time revoke such designation, provided, that simultaneously with the revocation of such designation, a substituted designation be filed by it with the board.

48:3-7.10. *Chancery to enforce compliance.* Jurisdiction and power is hereby conferred upon the court of chancery of this state, at the suit of the board, to enforce compliance with sections 48:3-7.8 and 48:3-7.9 of this title through sequestration of, or the appointment of a receiver for, the property in this state of any public utility failing to comply with the same.

48:3-7.11. *Service of process to produce records.* In case for any cause service of process to produce such records, books, accounts, documents or other writings cannot be effected upon a designated agent, service of such process may be made within this state upon any officer, agent or employee of such public utility having custody or control of the same, or access thereto.

48:3-7.12. *Certain railroads and railway express exempted.* The provisions of sections 48:3-7.8 to 48:3-7.11 of this title shall not apply to any public utility subject to the jurisdiction of the interstate commerce commission operating, managing or controlling a steam railroad or railway express within this state.

Article 2. Stocks, Bonds and Other Obligations.

48:3-8. *Issuance of stock without par value.* Any corporation organized or to be organized under any law of this state and defined as a public utility in section 48:2-13 of this title may issue its capital stock without nominal or par value, or change its existing capital stock to stock without nominal or par value, as may be provided for in its charter or certificate of incorporation or any amendment thereof, in the manner prescribed by Title 14, Corporations, General.

Nothing herein shall authorize the issue or sale of stock not having par value of any public utility corporation without the approval of the board, nor deprive the board of any authority or jurisdiction over the issue or sale of stock of any public utility now possessed by the board.

48:3-9. *Issuance of stocks and bonds; authority and approval of board required.* No public utility shall issue any stocks, stock certificates, bonds or other evidence of indebtedness payable in more than one year from the date thereof until it shall have first obtained authority from the board for such proposed issue.

The board, after hearing, shall approve the proposed issue maturing in more than one year from the date thereof when satisfied that the same is to be made in accordance with law and the purpose thereof be approved by the board.

48:3-10. *Sale or transfer of stock unless authorized by board prohibited.* No public utility incorporated under the laws of this state shall sell, nor shall any such public utility make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility, unless authorized to do so by the board. Nor shall any public utility incorporated under the laws of this state sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, or any person, the result of which sale or transfer in itself or in connection with other previous sales or transfers shall be to vest in such corporation or person a majority in interest of the outstanding capital stock of such public utility corporation unless authorized to do so by the board.

Every assignment, transfer, contract or agreement for assignment or transfer, by or through any person or corporation to any corporation or person in violation of any of the provisions hereof shall be void and of no effect, and no such transfer shall be made on the books of any public utility corporation. Nothing herein contained shall be construed to prevent the holding of stock lawfully acquired before March fifth, one thousand nine hundred and thirty-five.

Article 3. Municipal Consent to Use of Streets

48:3-11. *Article to govern granting of consents; "street" defined.* Where by law the consent of a municipality is required for the use of any street either above, below or on the surface thereof, such consent shall not be granted except as hereinafter in this article provided.

The word "street" as used in this article shall mean and include any street, avenue, park, parkway, highway or other public place.

48:3-12. *Petition; contents.* No such consent shall be granted by a municipality until a petition shall have been filed with the clerk thereof by the person desiring the same.

The petition shall specify the period for which the consent is asked, and the uses in detail for which the street is desired, and whether above, below or on the surface thereof. In the case of street railway or traction companies, the petition shall further specify the character of the road proposed to be constructed, operated and maintained, the motive power to be used thereon and the streets through which the same shall extend.

48:3-13. *Notice; publication.* The petition shall not be considered by the board or body of such municipality authorized to grant consent until public notice shall be given by publication once a week for at least two weeks in one or more newspapers published and circulated in the municipality, or if there be no such newspaper, in a newspaper published in the county in which the municipality is located, to be designated by such board or body, and by posting the notice in five of the most public places in the municipality for at least fourteen days before the meeting of the board or body at which the application shall be considered.

48:3-14. *Notice; contents.* The notice shall specify the name of the person or corporation presenting the petition, the date and hour when the same will be considered by the board or body of such municipality authorized to grant consent, the date of filing the same, the character of the use to which the street is to be put, and the time for which

permission or consent is sought. In the case of street railway or traction companies, the notice shall further specify the character of the road proposed to be constructed, operated and maintained, the motive power to be used thereon and the street in the municipality through which the same shall extend.

48:3-15. *Grant by ordinance; fifty-year limit.* Upon the date fixed by the notice, or upon such subsequent date as the hearing of the petition may be adjourned, the board or body of such municipality authorized to grant consent may, by ordinance and not otherwise, grant for a period not exceeding fifty years, the right to use the street petitioned for.

The ordinance shall not be acted upon by such board or body at the meeting at which the same is introduced but shall be laid over for not less than fourteen days and not passed until a subsequent regular meeting of the board or body or an adjourned meeting thereof.

48:3-16. *Acceptance of ordinance granting consent to be filed.* The consent granted by the ordinance shall not become effective unless an acceptance in writing of the ordinance shall be filed by the person applying for consent with the clerk or other equivalent officer of the board or body of the municipality granting the consent, within thirty days after receiving notice of the passage of the ordinance.

48:3-17. *Construction; exceptions.* The provisions of this article are in addition to other conditions imposed by law.

This article shall not apply to any railroad company, or to the giving of consent by one municipality for the use of any of its streets, either above, below or on the surface thereof, to another municipality for the laying therein of municipal water mains, upon obtaining such consent in the manner provided by law.

Article 4. Joint Use of Poles.

48:3-18. *Agreements between corporations.* Any corporation, municipal or otherwise, may enter into a written

agreement with any other such corporation owning or using any poles erected under municipal consent in any street, highway or other public place for the use by the former corporation of the poles upon such terms and conditions as may be agreed upon by the corporations.

48:3-19. *Municipal consent.* The consent of the municipality shall be obtained for the use by a corporation of the poles of another corporation unless each corporation has a lawful right to maintain poles in such street, highway or other public place.

48:3-20. *Powers, rights and franchises not impaired.* Such joint use of poles shall not lessen or impair the powers, rights, privileges and franchises of either corporation. Each corporation shall have the same powers, rights, privileges and franchises in respect to poles jointly used as each corporation has in respect to poles and wires under the laws of this state.